

SEP 08 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME CASTELLANOS-AVALOS,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 06-72371
07-70639

Agency No. A98-346-072

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

In these consolidated petitions, Jaime Castellanos-Avalos, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") removal order

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(No. 06-72371), and the BIA's order denying his motion to reopen based on ineffective assistance of counsel (No. 07-70639). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo claims of constitutional violations, *Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001), and for abuse of discretion the BIA's denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We dismiss in part and deny in part the petition for review in No. 06-72371, and we deny the petition for review in 07-70639.

We lack jurisdiction to review Castellanos-Avalos' unexhausted contentions that the IJ erred in determining his convictions for possession of stolen property and reckless endangerment were crimes involving moral turpitude. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (this court lacks jurisdiction to review contentions not raised before the agency).

Castellanos-Avalos has not supported his contentions that his removal proceedings violated equal protection, that he was not afforded an opportunity to show rehabilitation, and that his removal would result in cruel and unusual punishment.

The BIA did not abuse its discretion in denying Castellanos-Avalos' motion to reopen as untimely, because the motion was filed more than eight months after the BIA's April 12, 2006 final order. *See* 8 C.F.R. § 1003.2(c)(2). The BIA

properly determined that equitable tolling was not warranted because Castellanos-Avalos failed to establish that his counsel's allegedly deficient performance was prejudicial. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000).

We deny Castellanos-Avalos' Motion for Judicial Notice.

**No. 06-72371: PETITION FOR REVIEW DISMISSED in part;
DENIED in part.**

No. 07-70639: PETITION FOR REVIEW DENIED.